



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

H/20

SEP 5 1993

Harry B. Shubin
Millen, White & Zelano, P.C.
Arlington Court House Plaza I
2200 Clarendon, Suite 1201
Arlington, VA 22201

Re: Patent Term Extension
Application for
U.S. Patent No. 4,258,062

NOTICE OF FINAL DETERMINATION

A determination has been made that U.S. Patent No. 4,258,062 issued March 24, 1981, which claims the human drug product Zebeta, is eligible for patent term extension under 35 USC § 156. The period of extension has been determined to be two years.

The period of extension has been calculated using the FDA determination of the length of the regulatory review period published in the Federal Register of February 9, 1993. Under 35 USC § 156(c):

$$\begin{aligned}\text{Period of Extension} &= 1/2 \text{ (Testing Phase)} + \text{Approval Phase} \\ &= 1/2 (1,778) + 1,096 \\ &= 1,985 \text{ days}\end{aligned}$$

Since the regulatory review period began after the patent issue date, the entire period has been considered. No determination of a lack of due diligence was made.

The two year limitation of 35 USC § 156(g)(6)(C) applies in the present situation because: (1) the patent was issued before the date of enactment (September 24, 1984) of 35 USC § 156; (2) the date an exemption under subsection 505(i) of the Federal Food, Drug and Cosmetic Act involving the approved product became effective (September 19, 1984) was before the date of enactment; and, (3) the date the new drug application was approved (July 31, 1992) was after the date of enactment. Since the period of extension calculated under 35 USC § 156(c) for the patent cannot exceed two years under 35 USC § 156(g)(6)(C), the period of extension will be for two years.

The 14 year exception of 35 USC § 156(c)(3) does not operate to further reduce the period determined above.

A single request for reconsideration of this final determination as to the length of extension of the term of the patent may be made if filed within one month of the date of this notice. Extensions of time under 37 CFR § 1.136(a) are not applicable to this time period. In the absence of such request for reconsideration, the Commissioner will issue to the applicant for extension of the term of Patent No. 4,258,062 a certificate of extension, under seal, for a period of two years.

Upon issuance of the certificate of extension the following information will be published in the Official Gazette:

U.S. Patent No.:	4,258,062
Granted:	March 24, 1981
Applicant:	Rochus Jonas et al.
Owner of Record:	E. Merck GmbH
Title:	PHENOXY-AMINO-PROPANALS
Classification:	424/330
Product Trade Name:	Zebeta
Term Extended:	Two years

C. E. Van Horn

Charles E. Van Horn
Patent Policy & Projects Administrator
Office of the Assistant Commissioner for Patents

cc: Ronald L. Wilson, Director
Health Assessment Policy Staff
Office of Health Affairs (HFY-20)
Food and Drug Administration
5600 Fishers Lane, Room 11-44
Rockville, MD 20857

RE: Zebeta

FDA Docket No.: 92E - 0427